

**DOD DIRECTIVE FOR PROVIDING
FOR ANNUAL REVIEW OF MCM**



U.S. Department of
Transportation

General Counsel

400 Seventh St. S.W.
Washington D.C. 20590

SEP 12 1984

The Honorable Chapman B. Cox
General Counsel
Department of Defense
The Pentagon
Washington, DC 20301

Dear Mr. Cox:

Thank you for the opportunity to comment on the proposed Department of Defense Directive which implements the provisions of Executive Order No. 12473, as amended, requiring annual review of the Manual for Courts-Martial.

An effort such as this, directed towards keeping the system of military justice current and ensuring its soundness, has my full support.

The Department of Transportation agrees to the proposed directive as drafted.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim J. Marquez".

Jim J. Marquez
General Counsel



Department of Defense DIRECTIVE

January 23, 1985
NUMBER 5500.17

GC, DoD

SUBJECT: Review of the Manual for Courts-Martial

- References:
- (a) Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order No. 12484
 - (b) Manual for Courts-Martial; Amendment Policy, 47 Federal Register 3401 (1982) (hereby canceled)
 - (c) Uniform Code of Military Justice (UCMJ), Article 36 (10 U.S.C. § 836) and Article 67(g) (10 U.S.C. § 867(g))
 - (d) DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964
 - (e) DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976

A. PURPOSE

This Directive:

- 1. Implements the requirement established by the President that reference (a) be reviewed annually.
- 2. Cancels reference (b).

B. APPLICABILITY AND SCOPE

- 1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, and, by agreement with the Secretary of Transportation, to the Coast Guard.
- 2. This Directive is intended only to improve the internal management of the Federal Government; it is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

C. POLICY

It is DoD policy to review annually the Manual for Courts-Martial, to ensure that the Manual fulfills its fundamental purpose as a comprehensive body of law governing military justice procedures and as a guide for lawyers and nonlawyers in the operation and application of such law.

D. PROCEDURES

1. Annual Review

- a. A draft of the annual review of the Manual for Courts-Martial required by the President under reference (a) shall be prepared by the Joint Service Committee on Military Justice. The Joint Service Committee consists

of one representative of each of the following: the Judge Advocate General of the Army; the Judge Advocate General of the Navy; the Judge Advocate General of the Air Force; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; and the Chief Counsel, United States Coast Guard. In addition, the Court of Military Appeals shall be invited to provide a staff member to serve in a nonvoting capacity with the committee.

b. The Joint Service Committee on Military Justice shall review the Manual (including the Discussion and Appendices) in light of judicial and legislative developments in civilian practice to:

(1) Ensure that the Manual, the Discussion, and the Appendices apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in United States District Courts to the extent practicable and to the extent that such principles and rules are not contrary to or inconsistent with the UCMJ. See Article 36, UCMJ (reference (c)). This includes the requirement that the Manual must be workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

(2) Ensure that the Manual, the Discussion, and the Appendices reflect current military practice and judicial precedent.

c. The Joint Service Committee shall send its draft review to the General Counsel not later than April 15, 1985, and February 1 of each year thereafter. A copy of the report shall be sent to the committee, established by Article 67(g), UCMJ (reference (c)), which may submit comments on the draft review to the General Counsel.

d. The draft review shall set forth any specific recommendations for changes in the Manual, the Discussion, or the Appendices. If no changes are recommended, the draft review shall so state. If changes are recommended by the Joint Service Committee, the public notice procedures of subsection D.3., below, are applicable. If the Joint Service Committee determines that an aspect of civilian practice should be adopted, but recommends that the Manual should not be changed because the proposal would be contrary to or inconsistent with reference (c), the draft review should contain a legislative proposal. Minority reports, if any, shall be included.

e. Proposed changes to the Manual for Courts-Martial and proposed legislative changes that are recommended in the draft review are subject to the coordination requirements of DoD Directive 5500.1 (reference (d)).

2. Other Changes to the Manual for Courts-Martial

a. Normally, changes to the Manual for Courts-Martial will be proposed as part of the annual review set forth in subsection D.1., above. However, when earlier implementation is required, proposed changes may be sent to the General Counsel for coordination under reference (d).

b. Proposed changes to the Manual for Courts-Martial under this paragraph are subject to the public notice procedures of subsection D.3., below.

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3. Public Notice

- a. Notice that the Department of Defense intends to recommend changes to the Manual for Courts-Martial shall be published in the Federal Register before submission of such changes to the President, unless the Secretary of Defense proposes that the President issue the change without such notice on the basis that notice and public procedure thereon is unnecessary or contrary to the sound administration of military justice.
- b. The Joint Service Committee on Military Justice shall coordinate with the Office of General Counsel as to the timing and content of such notice.
- c. The notice shall include a brief description of the matters contained in the proposed change, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining a copy of the proposed change.
- d. A period of not less than 75 days after publication of notice shall be allowed for public comment, but a shorter period may be prescribed when it is determined that a 75-day period is unnecessary or contrary to the sound administration of military justice.
- e. Comments shall be submitted to the Joint Service Committee on Military Justice.

E. RESPONSIBILITIES

1. The General Counsel is responsible for the administration of this Directive, including approval of the annual review of the Manual for Courts-Martial, coordination of any proposed changes to the Manual for Courts-Martial under DoD Directive 5500.1 (reference (d)), approval of any proposed changes to the Discussion and Appendices accompanying the Manual for Courts-Martial, and transmittal to the Congress of rules approved by the President. See Article 36, UCMJ (reference (c)).

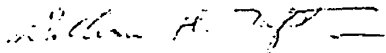
2. The Judge Advocates General of the Military Departments; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; and the Chief Counsel, United States Coast Guard are responsible for appointment of representatives to the Joint Service Committee on Military Justice.

F. INFORMATION REQUIREMENTS

The reporting requirement prescribed in subsection D.1. is exempt from formal approval and licensing in accordance with subsection VII.C. of enclosure 3 to DoD Directive 5000.19 (reference (e)).

G. EFFECTIVE DATE

This Directive is effective immediately.



William H. Taft, IV
Deputy Secretary of Defense